

This is a claim for a May 8, 2000 accident and the resulting low back injury and back surgery. As respondent had offered claimant an opportunity to return to work at an accommodated job as a car salesman, the Judge entered the May 1, 2002 Award granting claimant a 16 percent permanent partial general disability, which was based upon the parties' agreement regarding the extent of claimant's whole body functional impairment.

But claimant terminated his employment with respondent after working the accommodated job for approximately five weeks. Claimant then initiated this request for review and modification of the initial Award, alleging that he was justified in terminating his employment and, therefore, entitled to receive a work disability (a permanent partial general disability greater than the functional impairment rating). Judge Benedict, however, disagreed and in the December 24, 2002 Award denied claimant's request for additional permanent partial general disability benefits.

Claimant contends Judge Benedict erred. Claimant argues the accommodated job as a car salesman was not reasonable as (1) he was required to work 48 to 60 hours per week, six days per week, rather than the 38 hours per week, five days per week, that he was allegedly promised, (2) his drive time to work was allegedly increased by 50 minutes, and (3) he allegedly was unable to successfully sell cars. Accordingly, claimant requests the Board to award him a work disability.

Conversely, respondent and its insurance carrier contend the December 24, 2002 Award should be affirmed. In the alternative, they argue that any work disability should be limited to 20.3 percent, which is based upon a 23 percent wage loss and a 17.6 percent task loss.

The only issue before the Board on this appeal is whether claimant has established that the accommodated job as a car salesman was unreasonable in light of all the facts and circumstances. If so, claimant should be awarded a work disability. If not, the December 24, 2002 Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes that the December 24, 2002 Award denying claimant's request for a work disability should be affirmed. The Board concludes that claimant has failed to establish that the car salesman job that respondent provided claimant was unreasonable.

The facts leading up to claimant's return to work for respondent following his May 2000 back injury are not in dispute. Respondent is an automobile dealership with locations in Atchison, Kansas, and St. Joseph, Missouri. Before the May 2000 accident, respondent employed claimant as its body shop manager at the Atchison, Kansas, location. Although claimant was the body shop manager, claimant also performed the actual work on the cars and trucks that came into the body shop.

On May 8, 2000, claimant injured his lower back while performing body work on a vehicle. As part of his medical treatment, in July 2000 claimant underwent low back surgery. In January 2001, claimant's doctor released him to return to work with permanent

restrictions. Respondent, who had decided to close its Atchison, Kansas, body shop, advised claimant it had no job for him. But when claimant, who was unemployed, appeared for an April 2002 regular hearing, respondent offered him a job as a car salesman at the St. Joseph, Missouri, location which paid approximately 90 percent of claimant's pre-injury wage.

Claimant accepted the sales position and in April 2002 returned to work for respondent as a salesman, which is the position that claimant held until he voluntarily quit approximately five weeks later. Claimant then remained unemployed until August 2002, when he began working for an Atchison vocational technical college. In that job, claimant earns \$10.50 per hour working approximately seven hours per day. Claimant's contract with the college limits him to working only 194 days per year.

The parties dispute the time that claimant would have to drive from his home to St. Joseph as well as the mileage between Atchison and St. Joseph. The parties dispute the number of hours per week that claimant was told he was expected to work. Likewise, the parties dispute whether a sales position opened at the Atchison facility after claimant began working in St. Joseph and whether claimant requested a transfer to that location, which was a much closer commute being only 17 miles from claimant's home. Finally, the parties also dispute whether claimant made a good faith effort to perform the accommodated job as a salesman as claimant failed to sell any cars during the approximate five-week period that he worked as a salesman.

When considering the entire record, the Board finds that claimant has failed to establish that the sales job at the St. Joseph location was unreasonable or that he was justified in terminating his sales job. The Board concludes that when considering unemployment as the alternative, neither claimant's hours as a salesman nor the commute to St. Joseph was unreasonable. Moreover, although claimant felt that he was not successful in sales, respondent had not moved either to discipline or terminate his employment for that reason. The Judge appropriately denied claimant's request for a work disability.

### **AWARD**

**WHEREFORE**, the Board affirms the December 24, 2002 Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant  
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director